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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,815	01/10/2001	Barb Ariel Cohen	407T-898910US	2715

7590 04/01/2003  
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EXAMINER	
GITOMER, RALPH J	
ART UNIT	PAPER NUMBER
1651	

DATE MAILED: 04/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/759,815

Applicant(s)

Potts et al.

Examiner

Ralph Gitomer

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jan 28, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12, 16-20, 22-39, 43-47, and 49-54 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 16-20, 22-39, 43-47, and 49-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 6) ☐ Other: \_\_\_\_\_

Applicant's election without traverse of Group I, claims 1-12, 16-20, 22-39, 43-47, 49-54 in Paper No. 9 is acknowledged. This application is a CIP of 09/519,533, allowed but currently  
5 unavailable. Please inform the examiner of all related cases and their status. Also please inform the examiner as to how this application differs from the parent application to determine the proper priority date for this application. No priority is granted at this time.

10 The petition to correct inventorship under 37 CFR 1.48(b) is entered and accepted.

A search does not reveal employing pectinase for the function presently claimed in claims 1-12, 16-20, 22-28, 53-54. Claims 29-39, 43-47, 49-52 do not recite pectinase.

15 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

20 (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

25 Claims 29-39, 43-47, 49-52 are rejected under 35 USC 102(b) as being anticipated by Tuse.

Tuse (WO 92/17786) entitled ~~Assay~~ Assay Device and Method of Detecting Chitin ~~teaches~~ teaches in the abstract, detecting chitin by using enzymes which specifically bind chitin where the sample is filtered and a signal is produced. On page 3 lectins are taught.  
5 On page 9 the sample may originate from humans, animals, plants or foods. On page 16 line 14, fluorescent agents are employed to produce a signal. Blocking agents are taught on page 11.

Regarding the presently claimed types of lectin and labels, are all conventional in this art and are encompassed by the  
10 teachings of Tuse.

All the features of the claims are taught by Tuse for the same function as claimed.

Claims 1-12, 16-20, 22-39, 43-47, 49-54 are rejected under  
15 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all occurrences.

The preamble of claim 1 is directed to detecting chitinous  
20 material but the last step in the claim is directed to indicates the presence of chitin. Claims 11 and 12 are directed to blocking agents but their function is not seen. The preferred spelling is ~~microorganism~~ microorganism~~.~~.

The title of the invention is not aptly descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

5           The following prior art pertinent to applicant's disclosure is made of record and not relied upon:

Baldo (Australian J Plant Physiology) teaches lectins as probes.  
Potts (Food Microbiology and Safety) with a different inventive  
entity than the present application, teaches a lectin test for  
10 mold.

Cousin (J of Food Protection) teaches chitin as a measure of mold contamination.

Gourama (J of Food Protection) teaches detecting of molds in foods.

15           Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (703) 308-0732. The examiner can normally be reached on Tuesday-Friday from 8:00 am - 5:00 pm.  
20 The examiner can also be reached on alternate Mondays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (703) 308-4743. The fax phone number for this Art Unit is (703) 308-4556. Any inquiry of a general nature or relating to the status  
25 of this application should be directed to the Group receptionist

Serial No. 09/759,815  
Art Unit 1651

-5-

whose telephone number is (703) 308-1235. For 24 hour access to  
patent application information 7 days per week, or for filing  
applications electronically, please visit our website at  
www.uspto.gov and click on the button Patent Electronic Business  
Center for more information.

*Ralph Gitomer*

Ralph Gitomer  
Primary Examiner  
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RALPH GITOMER  
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